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IN THE

SUPREME COURT

OF THE

UNITED STATES.

Clarence A. Anderson,
Appellant,

vs.

James W. Clune,
Appellee.

APPELLANT'S BRIEF.

Jurisdiction.

The action was brought by appellee to declare the appellant a trustee for appellee, of California land of the value of over $3000, upon the ground that the U. S. Land Department had, through a mistake of law, wrongfully issued patent therefor to the appellant instead of to the appellee; the mistake of law consisting in an alleged erroneous construction of U. S. Rev. Stats 2306-7.

The District Court denied the defendant's motion to dismiss, urged upon the ground that the complaint did not state a cause of action.

Upon appeal, the Court of Appeals of the Ninth Circuit, certified the questions involved to this court, under Section 329 of the Judicial Code.

Statement.

The appellee brought this action to have the appellant declared trustee for him of the legal title to 20.49 acres of land entered by the appellant at the United States Land Office in Independence, California, patent upon such entry having been thereafter issued to the appellant. [Record p. 2.]

The appellee based his equitable right to this land upon the fact that prior to the appellant's filing upon it the appellee had himself filed thereon under a soldier's additional homestead right assigned to him by the heirs of a deceased soldier, Amory K. Johnson; but the United States Land Office held the appellee's filing and entry for rejection, and finally on November 14, 1923, rejected the same for the reason that the assignment to appellee of the deceased soldier's homestead right had not been made prior to the administrative ruling of the Department of the Interior dated February 15, 1917, Circular No. 528 (46 L. D. 32) which undertook by construction of U. S. Rev. Stats., Secs. 2306 and 2307, to limit a soldier's additional homestead right to the exercise thereof (1) directly by the soldier himself entering the land or indirectly by his transferring his right during his lifetime to an assignee, (2) similarly to his widow while she remained his widow and in her lifetime, (3) and in the absence of such exercise by the soldier or his widow during their lifetime, then similarly to his minor orphan children during their minority through a guardian. [Record pp. 1 & 2.]

The appellant moved to dismiss appellee's complaint setting up the foregoing facts, upon the ground that it failed to state facts sufficient to constitute a cause of

action; the motion was denied; appellant electing to stand upon his motion, judgment was entered against him as prayed for, appeal was taken therefrom, and the Court of Appeals (Ninth Circuit) certified the case to this court under Section 239 of the Judicial Code, setting forth the foregoing facts in its certificate. [Record p. 2.]

The question involved is whether the Land Department has erred in its construction of the law with reference to the assignability of soldiers' additional homestead rights.

Specification of Errors Relied Upon.

The appellant specifies as error the action of the lower court (1) in denying his motion to dismiss the complaint, and (2) in entering judgment in favor of the appellee.

Brief of Argument.

1. It is true that the Federal Supreme Court and inferior courts of the United States in a number of decisions have held that these soldiers' additional rights are assignable, but these decisions all relate to rights held by the soldier, his widow or his minor heirs, and none of them hold that said rights are inheritable. While the General Land Office did up to 1917 hold them to be inheritable, and hence assignable by the heirs generally, or the administrator, it has now discovered its error in such rulings and declares these rights are not inheritable and hence not assignable; in other words that they are not property at all, but powers dying with the donee. A careful reading of the sections of the statutes

involved should convince the court of the correctness of the rule of the General Land Office as now declared.

> "Every person entitled, under the provisions of Section 2304 to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than 160 acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed 160 acres."
>
> U. S. Rev. Stats., Sec. 2306.

> "In case of the death of any person who would be entitled to a homestead under the provisions of Section 2304, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; and if such person die during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title."
>
> U. S. Rev. Stats., Sec. 2307.

2. Appellant is content to depend on the reasoning of the Secretary of the Interior as set forth in the circular of Feb. 15, 1917, Circular No. 528 (46 L. D. 32).

3. It is a well settled rule that the decisions of the Land Office upon all issues presented for its consideration are presumably right.

> Corbet v. Wood, 32 Minn. 509;
> Joiner v. Company, 107 Fed. 597.

4. If the Secretary of the Interior has been in error in former decisions relative to the meaning of a statute,

it is always competent for him to correct the rule unless former titles obtained under an erroneous interpretation are upset.

5. A decision of the Land Office in a contest should be sustained by the courts unless there are clear and cogent reasons for overturning it.

Sanford v. King, 19 S. D. 334;
Wiscom v. Eastman, 21 Wash. 163.

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